

REMARKS

Claims 1-2 were pending on the application. Claims 1-2 were rejected. Examiner rejected claim 1 under 35 U.S.C. § 112 as failing to comply with the written description requirement and for being indefinite. Applicant has canceled claim 1, so examiner's rejection under 35 U.S.C. § 112 is now moot. Applicant has amended claim 2 so that it now includes elements not disclosed by any of the patents that examiner referenced.

35 U.S.C. 102

Claims 1-2 are rejected under Martins

Examiner has rejected claims 1-2 under 35 U.S.C. § 102(b) as being unpatentable over Martins (U.S. 5,379,914). In making the rejection, examiner stated:

Regarding claim 1, Martins discloses a screen member affixed to the inside of the can and attached to the periphery of the opening with the screen being concave to allow the opening member to move downward (Figure 5, column 2, lines 14-31).

Regarding claim 2, Martins discloses a screen member that expands downward into the inside of the can so as to permit the can to be opened while covering the opening of the can.

For a 35 U.S.C. § 102 rejection, it is well established case law that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant concedes that all of the elements of claim 1 are met by Martins. Accordingly, applicant has canceled claim 1. With respect to claim 2, applicant disagrees that Martins discloses a downwardly expanding screen member. There is nothing in the figures or specification of Martins' disclosure that indicates that the screen expands downwardly upon opening the beverage. Rather, Martins discloses a device in which the protective screen is always in a concave shape beneath the opening of the can.

However, the language of claim 2 is ambiguous in that it does not precisely state that the screen of the present invention expands upon opening the can. Claim 2 has been amended to make this novel aspect of the present invention clear. Because the screen in Martins' disclosure does not expand downwardly upon opening the can, applicant's amended claim 2 now contains elements that are not present in Martins. Examiner is respectfully requested to reconsider the rejection of claim 2 under Martins in light of the amendments to claim 2 and the foregoing comments.

Claim 2 is rejected under Webb et al

Examiner has rejected claim 2 under 35 U.S.C. § 102(b) as being unpatentable over Webb et al (U.S. 5,775,534). In making the rejection, examiner stated:

Webb et al discloses a screen member affixed to the underside of the opening member of the can with the screen member expanding downward into the inside of the can to permit opening of the can and covering the opening after the can is opened. See Figures 14 and 15 where the bowed section (53) of the screen member (50) is expanded as the screen section is pushed downward during opening of the can and the screen returns to protect the opening after the can has been opened (column 8, lines 7-26).

Examiner accurately notes that Webb et al discloses a downwardly expanding screen member. However, the screen member of the present invention is of a substantially different character than the one disclosed by Webb et al. The filter disclosed by Webb et al allows temporary exposure to outside elements when the filter is in its depressed position (see FIGS. 4-6 of Webb et al). The present invention never allows this sort of exposure to outside elements – a screen is always present between the drink and outer elements at all times.

Furthermore, the present invention employs a different means of expansion. The filter of Webb et al is generally flat and employs an elastic means to cause the filter to return to its filtering position after it is displaced. The present invention's expansion is accomplished not through an elastic means, but simply expands because the screen portion is compressed against the upper part of the can, and loosens when pressure is applied to it. Applicant has amended claim 2 to reflect the novelty of the present invention's expandable screen. Examiner is respectfully requested to reconsider the rejection of claim 2 under Webb et al in light of the amendments to claim 2 and the foregoing comments.

APPENDIX

The following is how the claims shall appear after the above amendments are made:

Claim 1 (canceled):

Claim 2 (currently amended): A screen for keeping an insect or other contaminant out of a pull tab beverage can comprising:

a compressed screen member affixed to the underside of the opening member of a pull tab beverage can;

said screen member capable of decompressing and expanding downward into the inside of the can when downward pressure is applied to it upon opening the can so as to permit the can to be opened while protecting the contents of the can.

CONCLUSION

In view of the foregoing amendment and remarks, it is believed that this Application is now in condition for allowance. Early and favorable reconsideration is respectfully solicited.

If the Examiner has any questions regarding the foregoing amendment and remarks, or if prosecution of this Application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

Respectfully submitted,

By:



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Date: July 18, 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Non-provisional patent application of

Kurt Eckstrum

Group Art Unit: 3727

Application No: 10/760,638

Examiner Name: Harry A. Grosso

For: SODA CAN SAFETY SCREEN

Filing Date: January 14, 2004

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Office Action: April 20, 2006

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Mail Stop Response

Date of Deposit: ²⁰July 18, 2006

I hereby certify that this Response to Office Action and fee are being deposited with the United States Postal Service via First Class Mail on the date indicated above, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Mail Stop Response.


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Date: ²⁰July 18, 2006

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